Kansas Contested Election

Speech of

Wm. H. Fuller

Mch, 1856

SPEECH

OF

HON. WM. A. LAKE, OF MISSISSIPPI,

IN THE HOUSE OF REPRESENTATIVES, MARCH 18, 1856,

On the Resolution reported by the Committee of Elections in the Contested-Election case from the Territory of Kansas.

Mr. LAKE said:

Mr. SPEAKER: I propose to occupy but a small portion of the time of this House in the delivery of the views which I entertain on the subject before them. I assure you, sir, and the House which I have the honor to address, that I would not occupy one moment of their time, if I did not feel impelled by a strong sense of duty; for my brief experience in congressional legislation has impressed me with the belief that there is a much stronger desire on the part of members to speak than to listen. This conviction, connected with my natural repugnance to public speaking, would have kept me silent, if I did not deem it a duty to speak.

In saying that I deem it my duty to speak, I do not mean to declare that mine is a mission to carry conviction to the minds of those to whom I am speaking: no such thing. I do not expect anything will fall from me in the remarks I am about to submit that will change the opinion or effect the action of any member; nor do I speak in the popular language of this House to the country, because I am quite sure that but a small portion of that feels any interest in the views which I entertain on this or any other subject.

I will frankly say that I speak for myself, and for those whom I have the honor to represent, there being no vanity in supposing that those who sent me here will fell some interest in the opinions which I entertain on this grave and important question.

I propose, Mr. Speaker, to answer the arguments which have been made, not only by the gentleman who immediately preceded me, but those of gentlemen who have advocated the same side of this question.

I am opposed, sir, to the resolution which is now the subject of debate. I am opposed to sending for persons, for the purpose of investigating, not the "election, returns, and qualifications" of the sitting Delegate from the Territory of Kansas—for that is not the subject upon which information is sought or investigation desired—but to the sending for persons and papers to investigate an entirely different and distinct matter, and not within the scope of legitimate inquiry. It is a mistake to suppose that we who are opposed to this resolution are shrinking from the investigation of the charge, that the sitting Delegate does not hold his seat on this floor by a proper and legal tenure. We are not unwilling to examine into his "election, returns, and qualifications," the investigation of these subjects being the constitutional mode of ascertaining his right to a seat here. But whilst we declare our entire willingness to enter upon any and all fields of legitimate inquiry, we do pause, and hesitate, and refuse to enter upon those which, we say, the Constitution forbids; which, we believe, would make us trespassers, and this House guilty of a usurpation of power. Not only do I differ from the majority of the committee as to the extent of this investigation, but I also dissent from them in reference to the mode in which they propose to conduct it.

This is a judicial, and not a legislative question. We are to hear and determine—to examine the law and the facts, and to decide accordingly. If it were a legislative question merely, we might determine it upon considerations of expediency. We might weigh the individual merits of the contestants, inquire into their comparative fitness for the business of legislation, and admit the one that in our legislative wisdom would contribute most to the advancement of the great interests of the country. But in acting thus we should not be performing the duty assigned us; we would be acting the part of electors—usurping the place and rule of the people instead of ascertaining who has been elected by the people, and entitled to the seat according to the law and the facts of the case. That this is a judicial question which we are to try as a court, is not only apparent from the subject to be decided, and the mode of its trial, but the fifth section of the first article of the Constitution declares that "Each House shall be the *judge* of the elections, returns, and qualifications of its own members." This clause determines the character of the question to be

judicial, and this House the court to hear and decide it.

It is important to determine the character of this question, and the office of this House in regard to it, because as judges we do judiciously know many things which as legislators we may be ignorant of. As a high court—of Parliament, if you please—we know judicially not only the acts of Congress, but all the acts of the State and Territorial Legislatures, and all the officers of their various governmental departments. Hence, public records need not the same authentication, when introduced before us in testimony, as would be required to secure their introduction into a State court, or a tribunal which is not invested with this judicial omniscience. The question is judicial, and the trial of it must be judicial.

The next question that presents itself is, if it is a judicial question, how is it to be decided? What is the law, and where is the law that is to govern and control our decision? If we look into the Constitution, we find the rules that regulate and direct our inquiry. We there find a clause which prescribes the *qualifications* of members of this House. They must be twenty-five years of age, citizens of the United States for seven years, and an inhabitant of the State from whence they come. In regard to the *election*, we find another clause declaring that it shall be according to the acts of State Legislatures, which shall provide for the *time*, *place*, and manner of holding the election. These provisions of the Constitution, although relating to the Representatives of States, and not to Delegates of Territories, are nevertheless applicable to the case of the Delegate from Kansas, because the act of Congress organizing that Territory declares "that the Constitution and all laws of the United States which are not locally applicable shall have the same force and effect within the said Territory of Kansas as elsewhere within the United States."

The clauses of the Constitution already referred to being general and applicable to all the States, and there being nothing in the condition of Kansas rendering them "locally inapplicable," we must conclude that it was the intention of Congress to put them in force in that Territory. Through these clauses of the Constitution we easily arrive at the law which is to govern our investigations. The facts of the case we are to obtain in the ordinary modes by which we procure them in courts of justice. These modes are by depositions, or the sending for persons and papers. I do not doubt the power of this House to adopt the recommendation of the majority of the committee, and to send for persons and papers; but not being convinced by their reasons in favor of this plan, and knowing that the same purpose can be accomplished by the cheaper, and easier, and more usual mode of depositions, I am opposed to sending for persons. But, as the contestant has failed to avail himself of the provisions of the act of 1851, providing for the taking of depositions in cases of contested elections, I am entirely willing to send out commissioners to obtain all the facts within the range of legitimate investigation.

It will be seen, Mr. Speaker, by reference to the clauses of the Constitution already referred to, that our jurisdiction is limited. How far does it extend? It extends, first, to the election. What election? The election under which the Delegate claims his seat. We then turn to the clause of the Constitution touching the election of Representatives, and we find that section fourth of article first declares, that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." As this clause, by the Kansas bill, embraces Delegates as well as Representatives, we have only to look to the enactments of the Kansas Legislature to see if this part of the Constitution has been complied with, and a law passed on the subject. We know that such a law was passed, and that it does prescribe the time, places, and manner of holding the election for a Delegate to the Congress of the United States. It is in full compliance, both in form and substance, with the Constitution. This branch of our jurisdiction is, then, limited by this law, and the ascertainment of the fact as to whether the Delegate applying for a seat here was elected under it and pursuant to it. If we extend our inquiries beyond the subjects pointed out by the Constitution, we are transgressing our powers, and to that extent usurping authority.

When we examine as to the qualifications of the Delegate, we again find ourselves limited and our inquiries directed by the Constitution to his age, citizenship, and inhabitancy of the Territory. These are the qualifications laid down in the second section of the first article of the Constitution, and no State law can either add to them or diminish them. If a State or Territorial Legislature were to attempt it, as has been done, it is the duty of this House, as it has done on similar occasions, to disregard them, and consider them null and of no effect. In the word "returns," we perhaps find our jurisdiction the largest, because that is nowhere defined or limited by the Constitution. What are the returns of an election? It is not only the form in which the result of an election is made, but it embraces the casting up of the votes, and all means by which this result is to be arrived at. It authorizes an inquiry into the right of the voters to vote, and whether legal votes have been rejected; and, indeed, into all and everything that makes up the result of an election.

These are all subjects of legitimate inquiry by this House; and I repeat that we on this side of the question do not decline this investigation to the extent and in the mode which I have indicated. We have been always ready to inquire into and ascertain whether the election of Delegates in Kansas was conducted according to law—whether illegal votes were received by the judges, and whether legal votes were rejected by them—whether the returns exhibit the true result, and if the claimant has the qualifications required by the Constitution. This embraces all our jurisdiction over the subject and of course concludes our investigation.

But to this all we are required to do by the majority of the committee, and those who advocate the resolution and the reasons they have reported? Oh, no! by no means. They are not content to go into the subjects of investigation to which our steps are directed by the plain letter of the Constitution; but they invite us to inquire into other matters, jurisdiction of which has been rightly taken, as I think, by another tribunal, to which

they of right belonged. They allege that the Legislature which enacted the law under which the sitting Delegate claims his seat was an illegal assembly of persons; that it was conceived in corruption and brought forth by violence; that it assumed the guise of a legal and authoritative Legislature for the purpose of imposition and fraud. They insist that we shall examine into the "election, returns, and qualifications" of the members composing this body, who assumed the duties of legislation for that infant Territory.

Now, Mr. Speaker, where are we to get the authority to examine into the "election, returns, and qualifications" of the members composing either the State or Territorial Legislature? I have attempted to show, and hope I have succeeded, that the Constitution, that chart of our powers, does not authorize the investigation proposed.

The Legislature of Kansas has examined and decided upon the elections, returns, and qualifications of its own members, and we can neither take appellate nor original jurisdiction of the same question; nor have those who have insisted upon the exercise of this power by the House furnished either argument or precedent to justify us. Early in this debate I remember to have heard the eloquent gentleman from Georgia, [Mr. STEPHENS,] in gallant and knightly style, challenge the advocates of this power to produce a single case, in either England or America, in which all the legislative assemblies had not claimed and exercised the right to decide upon the elections, returns, and qualifications of their own members. Now, sir, we all acknowledge the ability of gentlemen who advocate the adoption of this resolution; we have all been made sensible of their industrious habits, and have witnessed in them a zeal that would more become a better cause—with books at their command without stint; and not a single case have they adduced that, in the slightest degree, would justify the step which they propose.

Mr. ALLISON. I think the gentleman from Mississippi does not make anything by that; for it is impossible in the history of either of the Governments to get a parallel case to the one which is now before the House. Shall it make anything for his side of the question, because in the history of neither Government can there be a case found at all similar to the one under discussion. I therefore object to the gentleman's taking anything by such a demand. The case is an unparalleled one in the history of our Government, and how could there be one like it in Great Britain—a Government entirely dissimilar to ours, and presenting no such case, having at no time a Delegate on the floor of the House of Commons to represent the people of a Territory? It therefore comes far short of the case now before the House, and nothing should be made by any such demand.

Mr. LAKE. I will leave for the present the course of my remarks, and reply to the gentleman from Pennsylvania. He says there is nothing in Great Britain like it—no territorial representative, and therefore no precedent ought to be expected from that quarter. Well, suppose they have no territorial representatives? Have they not got popular representatives, and cannot the same question arise in all countries where they have a legislative assembly composed of popular representatives? The question, Mr. Speaker, it seems to me, might arise in Great Britain as well as here, though perhaps not as likely to do so. I do not limit those who differ with me on this subject to the finding of examples amongst territorial representatives. Let them show any case, arising out of State representation, in which this House or State Legislatures have, either, exercised the power now claimed by gentlemen to belong to this House. I say they have not done it, and cannot do it.

But the gentleman says, that the case is without a parallel, and that neither side can find cases or precedents to sustain them. I differ with the gentleman; and say, that to the extent that we propose to go in this investigation, the book before me (Contested Elections) is full of precedents. We are following the beaten track, both of this and the English Government, and there is no dearth of authorities and sign-boards to show us that we are on the great highway. But those gentlemen who seek to draw us away from this course, may well be asked to exhibit some precedent or sign that we shall be right in following them.

But, Mr. Speaker, some of the gentlemen on the other side did take up the glove thrown down to them by the distinguished champion from Georgia, and have endeavored to make good their acceptance. The gentleman from Pennsylvania, [Mr. KUNKEL,] and the venerable chairman of the Judiciary Committee, as well as the gentleman from Indiana, [Mr. BARBOUR,] have all undertaken to meet this bold defiance by the introduction of authorities, in the shape of precedents, to sustain their course. Their failure is an additional argument against them, and is "confirmation strong as Holy Writ" of the position assumed by those who advocate this side of the question. I will examine these authorities before I finish.

Now, sir, I hold that the Kansas Legislature, like all other legislative assemblies that emanate directly from the people, was, from necessity, required to judge of the elections, returns, and qualifications of its own members. All must admit that, in popular representative governments, this is a preliminary question to that of legislation. Who are appointed to legislate must be decided before the legislation can commence. It is not a certain number of citizens who are authorized to legislate, but a certain number of representatives of the people. Who are, and who are not, representatives must, therefore, be ascertained, before the business of legislation commences. Only those whom the people have appointed and clothed with authority can rightfully legislate for a State. All will admit that the question must be decided, and that the decision ought to precede legislation.

Now, who is to decide this question? I hold that it is an inherent right in the Legislature itself. I do not assert that Congress could not have placed this power in some other body or tribunal; but not having done so, I think it belongs to each branch of the Legislature to decide for itself.

It is an incident to the power of legislation. When Congress authorized the people of Kansas to elect a Legislature and make laws for themselves, they conferred incidentally upon that Legislature the right of judging of the elections, returns, and qualifications of its own members.

The grant of power to legislate carried with it all the incidents and means necessary to render effectual the power granted. The right to protect themselves from intruders and usurpers—the means, of ascertaining who had the people's credentials—who had been elected by them—were necessary incidents to the great right of legislation, and indispensable to its exercise. By way of illustration, I will point to the clause in the Constitution, which says:

"When vacancies happen in the representation of any State, the executive authority thereof shall issue writs of election to fill such vacancy."

The authority hereby conferred on the Governors of the States carries with it the authority to appoint the time, places, and manner of holding an election to fill the vacancy, as fully and completely, and to the same extent, as that power is conferred on the Legislatures of the States, by the fourth section of the first article of the Constitution.

The whole doctrine of contempts in courts of justice is another illustration of the principle I have stated. A court fines and imprisons for contempt, without having the power expressly conferred upon it; but the power is conceded to belong to it as an incident necessary to the execution of the great powers intrusted to its administration. These examples establish the principle here contended for—that the grant of a power carries with it all the means and appliances necessary to carry into effect the power granted.

It is true, sir, that the Constitution confers on each House of Congress the right to decide upon the elections, returns, and qualifications of its members; but I have no doubt that each would have possessed this right, even if the Constitution had been silent on the subject. The House of Commons, in England, has always exercised the same right; and yet there is no Constitution there to confer it, and no act of Parliament has conferred it. It seems to me, sir, that unless the Kansas and Nebraska bill has vested this power—so indispensable to the right of legislation—somewhere else, it may be safely assumed to belong to each branch of the Legislature as an inherent right.

In corroboration of the views which I have here presented, I will call to the recollection of the House the remark made by my friend from Maryland, [Mr. Davis,] in the very eloquent speech with which he delighted all hearers a few days ago on this subject. He represented the Supreme Court as having decided that the question which I am now discussing can never arise in a court, because the duty of courts commences where legislation ends. The organization of the Legislature must be conceded before the power of the courts can be called into exercise. I have not read the decision, but will suppose it to be a sound political theory. How important is it, therefore, to concede this power in the Legislature, as the question cannot be made in the courts!

But, Mr. Speaker, I am constrained to dissent from my friend [Mr. Davis] in the opinion expressed by him, that the act organizing the Territory of Kansas conferred the power of judging of the elections, returns, and qualifications of the members of the Legislature upon the Governor. He says, this power is vested in the Governor by the twenty-second section, which declares, that "the persons having the highest number of legal votes in each of said council districts for members of the Council shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of said House." By this section, Congress directed the Governor to have the first election held at such time, places, and in such manner as he might direct; lay off the districts; apportion the representation; appoint the judges; and finally declare the persons elected who had the highest number of votes.

The returns of the officers holding the election were evidently designed to be made to the Governor, there being in fact at that time no other public functionary to whom they could properly be made. But I cannot think that the language quoted from the act ever was intended to confer upon him the power in question, especially when we recollect that it is a power always exercised by the Legislatures of the States, and never, in a single instance, that I am aware of, exercised by a Governor. Throughout the whole organic act, the intention of Congress to make the same divisions of power that have obtained in the State governments, is most manifest. This power, if conferred on the Governor, as is supposed, was a remarkable departure from the usages in the States, and without any reason for its exercise by the Governor, at the first assemblage of the Legislature, that would not apply with equal force to all subsequent meetings of that body. The election returns all being made to him, it is not wonderful that he should have been authorized to issue certificates of election to such persons as appeared to have the highest number of votes, and which would be presumptive evidence of an election. But, sir, I think the organic act itself contains the strongest argument against the idea that this power was conferred upon the Governor by the language which has been quoted from the twenty-second section.

The thirty-second section of the Kansas and Nebraska act provides for the election of a Delegate to this body, and contains the following clause:

"The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly."

The language last quoted is almost identical with that cited above to show the Governor's power to declare members of the Council and of the House duly elected. The language is not only the same in the quotations, but is used in reference to kindred subjects, and must have the same meaning attached to them. If Congress intended that the Governor should have the power to judge of, and determine, the elections, returns, and qualifications of the members of the Council and the House of Representatives, it is most certain that they intended to confer on him the same power in reference to the election of Delegate to this body. But Congress could not confer upon the Governor of Kansas the power over the election of Delegate to this House that my friend from Maryland claims they have done over the members of the Council and the House of Representatives of the Territory. The Constitution having placed the power in this House, it cannot

be maintained for a moment that Congress intended to vest the same power in the Governor of Kansas. It could not be done, and doubtless was not attempted. It seems to me clear beyond cavil, that Congress never intended to confer upon the Governor of Kansas any other power over the elections, returns, and qualifications of the members of the Council and of the House of Representatives than is usually exercised by Governors of the States in similar circumstances, and that his certificate was only *prima facie* evidence of the election, and not conclusive.

But, sir, the cry is still, that the members of the Legislature were elected by armed strangers, who drove the citizens from the polls, or so intimidated them as to keep them from voting; and all this, they say, calls for remedy and redress. I admit that if the members who composed the Legislative Assembly were elected by strangers, and not by the citizens of the Territory, it was a great outrage, and ought and could have been remedied. If the views which I have presented on this subject are deemed sound, then their remedy was by contesting before the Legislature itself the election of these spurious members. Then was the time and then the place to apply the correction to this evil. It was the duty of those who now complain that they were the victims of this outrage. If they preferred submission to wrong, to a manly resistance at the proper time and place—if, as the lawyers say, they had their day in court, and would not demand the redress that they were entitled to, it was their own folly, and their complaints at this day, whilst they cannot cure the evil, publish their own shame.

It is not the least suspicious circumstance about this case, that these American freemen (as they are called) should have submitted with so much patient forbearance to these wrongs, never having preferred their complaints at home before the authorities whose duty it was to hear them, but reserved them for our ears, who have not the power of redressing them. Instead of resorting to a jury of the *vicinage*, they changed the venue, and removed the case two thousand miles to Congress, and require us to say whether this was or was not a valid Legislature. To that we answer, that it was a valid Legislature so far as we are permitted to judge. We know that the organic law of the Territory provided for a Legislature, and prescribed how it should be chosen, setting out the qualifications of voters, and directing the Governor to appoint the time, place, and manner of holding the election. We know that the Governor performed his duty in this regard, and that the Legislature was convened pursuant to his call. He communicated with them as a legislative body, and a series of laws was passed by them amongst which was one regulating future elections. This law, therefore, is accompanied by all the marks and evidences of a valid enactment that any law can possess; and unless we declare that our functionaries are all corrupt, and that neither faith nor confidence can be placed in man, we are bound to say that the Legislature was constituted according to law, and that these enactments have all the sanctity and validity of laws.

Now, Mr. Speaker, I will briefly review the cases introduced by gentlemen on the other side of this question which, they allege, maintain and fortify their position. Remember, sir, that they insist that this House can examine into the elections, returns, and qualifications of the members of the Kansas Legislature, and that their authorities sustain that view. The case of Spaulding *vs.* Mead, from Georgia, was relied upon by the three gentlemen who accepted the challenge of the gentleman from Georgia, [Mr. STEPHENS.] The case will be found in the volume of contested cases from 1789 to 1834. It exhibits the following facts: The Legislature of Georgia passed a law fixing the time, places, and manner of holding elections for members of Congress, and added to these requirements of the Constitution, that the returning officers should make their returns within twenty days after the election. By the returns made within the twenty days, as was required by the statute, Mead had 4,438 votes, and Spaulding had 4,269. The certificate of election was given to Mead. Three of the counties of the district did not make returns within the twenty days, and they were excluded. The sole objection to these returns was the tardiness with which they were made. When added to the returns received within the time prescribed by law, they changed the result, and showed a majority of thirty-nine votes for Spaulding. Spaulding contested the seat of Mead successfully. The report of the committee was in his favor, and received the sanction of the House. I read the following extract from it:

"Upon the foregoing statement of facts, as the Constitution has made this House the judge of the elections and returns, as well as the qualifications, of its members; as the returns from the State authorities, therefore, are only *prima facie* evidence of an election, but not conclusive upon this House; as there is in the present case satisfactory proof, that the votes of the three counties in question, although the returns thereof were not transmitted to the Governor in season to be considered by him, were, originally, good, lawful, constitutional votes, *having been given by qualified voters on the day, at the places, and in the manner prescribed by law*; and as neither the voters who gave them, nor the candidates in whose favor they were given, have done, or omitted, anything on their part to forfeit their respective right, the committee are of opinion that these votes ought to be allowed, and therefore recommend the following resolution."

This case, so far from opposing, affirms the view that I have taken of this case. The Georgia election law contained other requirements than those contained in the constitution. It not only prescribed the time, places, and manner of holding the election as required by the constitution, but excluded all returns not made to the Governor within twenty days from the day of the election. The law was in conflict with the constitution, and was therefore not obligatory upon the House, but was rejected by them.

The next case cited by these gentlemen, or some of them, is the case of Barney *vs.* McCreery, from Maryland, and will be found in the second volume of "Contested Elections," at page 167. The law of Maryland districting the State and regulating elections made a district of Baltimore county and city, and authorized the election of two Representatives to Congress, *one of which should reside in the city, and the other in the county.* Four candidates run. Mr. Moore lived in the county, and received 6,164 votes; Mr. McCreery lived in the county, and received 3,559 votes; Mr. Barney lived in the city, and received 2,663 votes; and Mr. Seat, who also lived in the city, received 353 votes. Mr. Moore's election was conceded.

Mr. Barney, relying upon the law of Maryland, contested Mr. McCreery's seat, because he resided in the county, and not in the city. The congressional committee in this case say in their report as follows:

"The committee proceeded to examine the Constitution with relation to the case submitted to them, and find that the qualifications of members are therein determined, without reserving any authority to the State Legislatures to change, add to, or diminish those qualifications; and that by that instrument Congress is constituted the sole judge of the qualifications prescribed by it, and obliged to decide agreeably to the constitutional rules; but the State Legislatures being by the Constitution authorized to prescribe the time, place, and manner of holding the elections, in controversies arising under this authority Congress is obliged to decide agreeably to the laws of the respective States.

"On the most mature consideration of the case submitted to them, the committee are of opinion that William McCreery is duly qualified to represent the fifth district of the State of Maryland; and that the law of that State restricting the residence of members of Congress to any particular part of the district for which they may be chosen is contrary to the Constitution of the United States."

The House cannot fail to perceive that this case, like the one from Georgia, turned upon the fact, that the law of Maryland undertook to add qualifications not contained in the Constitution of the United States; and the House was bound either to disregard the law of Maryland or violate the Constitution. This case also sustains the view which I have taken of our power and duty in reference to the contested election before us. Whenever the Constitution prescribes that the State Legislatures shall, by law, prescribe the time, place, and manner of holding the election, and the law thus passed complies with the Constitution, we will conform to its requirements; but when the Legislature goes beyond the dictates of the Constitution, either in the matter of elections, or the qualifications of Representatives, then we are to reject the law or violate the Constitution. In these cases the validity of the State laws were tested by comparing their provisions with those of the Constitution, and not by instituting an inquiry into the election, returns, and qualifications of the members of the Legislature who passed them.

Some other cases have been cited by gentlemen on the other side, not more applicable than those that I have noticed, and equally reconcilable with the principles that have been maintained on this side of the question. Two of them occurred in the other end of the Capitol, in which the Senate inquired whether the claimant had been elected by the Legislature of the State which he claimed to represent. This was certainly a very legitimate inquiry, seeing that the Constitution has provided for the election of Senators in that way and no other. If they were not elected by the State Legislatures, they were clearly not entitled to be received as Senators. But, in none of the cases cited by gentlemen, in which the contest was before this House or before the Senate, does it appear that either body ever inquired into the elections, returns, and qualifications of the members composing the State Legislatures; and I feel warranted, therefore, in repeating the defiant remark of the gentleman from Georgia, [Mr. STEPHENS,] that no such case can be found in either England or America.

Now, Mr. Speaker, we have heard much about the fraud, corruption, and violence by which the Kansas Legislature was elected, and the people cheated out of the representatives of their choice. You will find that *fraud, corruption, violence,* and *invasion,* and such like monstrous terms, figure most conspicuously in the report of the majority of the committee. You will also find the same, or similar phrases and ideas, composing the staple of the speeches made in support of that report. It becomes worth while now to inquire how far all these grievances, supposing them to exist, will affect the validity of an election. Suppose it to be true, as alleged in the report of the majority, that large bands of organized men came over from Missouri with martial music, with banners flying, together with "all the pride, pomp, and circumstance of war." Suppose they had tents and arms, provisions and forage, and in one instance artillery, and pitched their tents in and about the places designated for holding the elections, for the purpose of intimidation; and suppose the citizens were actually intimidated, and kept away from the polls by the dread of insult or personal violence; or suppose that they were actually beaten off, or captured and detained from the polls, and prevented from exercising the elective franchise,—would any or all of these outrages invalidate or affect the returns of an election.

Do not suppose, sir, for one moment, that I am either the advocate or apologist of such scenes; but I wish to ask if they can affect the legality of an election? I certainly think not. If legal votes are presented to the judges and rejected, or if illegal votes are received by them when they should have been rejected, the returns will be invalid to the extent of such occurrences; and it would be the duty of the Legislature, who are the judges of these returns in the last resort, to purge the polls and declare the true result. But any violence or fraud by which legal voters were kept from the polls, I maintain, would not be considered by those who are charged with the duty of deciding upon the election, returns, and qualifications of members, or those claiming to be members. These views apply to all elections, either for members of the Legislature, or for Delegates or Representatives to this House.

To illustrate my views, I will suppose a case. Suppose great excitement was gotten up, during the canvass, between the contestants in this case—suppose the angry passions of their supporters to be aroused to a very high degree, and that two of the friends of each of the gentlemen had casually met the day before the election, and from angry words they had proceeded to blows; and suppose the friends of the sitting Delegate had so beaten the friends of his rival as to prevent them from getting to the polls on the next day: and suppose the returns to show the sitting Delegate to be elected by one majority only, and the fact be made to appear that, if the beaten voters could have got to the polls, that the majority would have been reversed,—I ask, emphatically, if the returns would be altered so as to rid the result of the effects of this violence? I say, no; and believe no man in this House can be found to say yes. Under our power to judge the election, returns, and qualifications of members, we would be compelled to award the seat to the sitting Delegate. The elective franchise is a personal right: it belongs to the man. He may waive it, he may refuse to use it for a consideration, or he may be brow-

beaten and intimidated from its exercise, or he may cast it for a consideration at the bidding of another; but all these abuses of this great privilege, though they may be censured, they cannot be removed by us when we come to judge of the election, returns, and qualifications of members.

Mr. Speaker, we are told, in this majority report, that the Territory of Kansas was not only invaded by an armed force of foreigners, but that they have ever since held possession of it, and that the people of the Territory are now subjugated by these invaders. The committee have been imposed on. Does any man in this House, save themselves, believe this story? Is it not amazing that the majority of the committee should exhibit such credulity? An invading force has held possession of the Territory of Kansas, and actually subjugated the people by physical force; and yet we have a Governor there, whose duty it is to repel invaders, and quell domestic violence by the means subject to his control; and if it cannot be done by him, at the call of the Legislature or upon his own representation, the President of the United States is required by law to send the Army and Navy and militia from the States to his assistance. The Governor is in communication with the President, and the President with us, and yet no note of alarm has come to us or the country from either of these distinguished functionaries. Mr. Speaker, it is not—it cannot be so. You do not believe it. As the story came here with this contestant, it seems to have been gotten up for congressional consumption only.

Sir, I am opposed to giving the committee the power of sending for persons for another reason of great force with me. The reasons given in the majority report for the exercise of this extraordinary power are mainly contained in the address of Governor Reeder (the contestant) to them. His sensibilities seem to be much excited in behalf of the dear people whose representative he claims to be. He has described their sufferings and wrongs in their present state of subjugation. He is one of them—their friend; and occupying, as he says he does, the interesting and delicate relation of representative of them, let us see if this picture which he has drawn of them—his "chosen people"—is such as to recommend them to us as credible witnesses. He says they were driven from the polls on the 30th of March. Yes, sir, these freemen—the descendants of the Pilgrim Fathers, whose chivalrous love of liberty won for them an empire on this western continent—at the bidding of strangers, laid down the elective franchise, and took up the yoke of the conqueror. Governor Reeder was then Governor of the Territory, in the zenith of his power, basking at full length in the sunshine of presidential favor, and then, as now, the ardent friend of the free people of Kansas, able and willing to redress this wrong of being despoiled of the elective franchise. Well, of course he made them all free again, and restored to them that jewel of which their conquering foes had deprived them—the elective franchise. No, sir, he says to the committee that he did not, because these freemen were afraid to ask the boon of deliverance. They suffered on, and continue to suffer; and he asks that they may be sent for and brought here, in order that they may tell the story of their wrongs to us; for they are still so intimidated that they cannot tell it in Kansas. This, then, is the picture. Fright drove them from the polls! fright prevented them from complaining to him! and fright will keep them now from telling the truth boldly in the Territory!

I ask, Mr. Speaker, if these men claim to be the sons of revolutionary sires? I ask if the blood of Warren and Hancock circulates in their veins? No, sir; in my judgment, if the picture which Governor Reeder has drawn of them be true, they are the miserable spawn of the emigration aid society. They are too craven, too spiritless, even to be conductors on an underground railroad. [Laughter.] Yet gentlemen gravely ask you to bring these men here for the purpose of testifying, and expect you to believe them. Suffering, as they do, under an excessive timidity, you could only get them to testify by slipping them into a committee-room, to tell the story of their wrongs in soft whispers to the gentle ears of a committee. If I believed the picture of their degradation, as drawn by their representative, I would not believe them. The man that submits to outrages and forbears to complain, or to ask for redress from timidity, ought not to be put upon the witness-stand, because he ought not to be believed. It requires more boldness to speak the truth than these Kansas witnesses seem to possess.

But, Mr. Speaker, I will say that I do not believe this account of any considerable portion of the American people; I believe that it is a picture drawn and painted for effect; I believe it is not faithful; it is a caricature. If the outrages of which we hear were really perpetrated at the polls in March, the people of Kansas would not have suppressed their complaints, but would have demanded redress. And now, sir, I doubt not that, if a commission is sent out to take their depositions, they will tell the truth. If they are the pusillanimous, abject creatures that this picture would have us believe they are, interference is vain. The Government did wrong to exchange the Indians who possessed the country for such men. It was a bad trade. [Laughter.] Better, far better, would it have been to have left the broad prairies, the beautiful woodlands, and purling streams of that region to the sons of the forest, than to have cursed it with such a race.

A few words more, sir, and I have done. The only purpose declared by the memorial of Governor Reeder for sending for persons is to prove facts to invalidate the laws of the Kansas Legislature. If I have succeeded in showing that the proof is inadmissible for that purpose, because it is not within our jurisdiction, then there is no reason for sending for persons, and this motion must fail. The memorial sets up no other demand for parol testimony, except to show that the Kansas Legislature was illegal, because of the fraud and violence which prevailed at the election of its members. It is true, sir, that he charges, in his memorial, "that said pretended election was not conducted even according to the forms and mode prescribed by the supposed law which purported to authorize it." By "pretended election" he means the election of the sitting Delegate. This charge looks as if parol testimony was required to prove some departure from the law regulating the election for Delegate. But you will see, in a following sentence, that he excuses himself from making specifications under this charge, "by reason that he has been unable to

obtain from the executive office in said Territory the necessary information, or any copies of the returns of said election." Thus showing, unmistakably, that for legitimate objects persons are not wanted from Kansas as witnesses. For all purposes of legitimate inquiry he relies upon information and records contained in the executive office. If, therefore, the House is of opinion that we cannot go behind the Kansas law, and examine into the election returns and qualifications of the members of the Kansas Legislature, this application to send for persons is useless, and must fail. To the sending for papers no one objects.

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